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FEDERAL MARITIME COMMISSION

HAPAG-LLOYD/NYK SPACE CHARTER AGREEMENT

FMC Agreement No. 011891

A Cooperative Working Agreement

Expiration Date: None



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Hapag-Lloyd/NYK Space Charter Agreement
FMC Agreement No. 077897

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1. Full Name of the Agreement. The full name of this Agreement is the Hapag-Lloyd/NYK Space Charter Agreement (the "Agreement").

2. Purpose of the Agreement. The purpose of the Agreement is to promote the efficient utilization of vessels and equipment and to provide stable and reliable liner services in the Trade (as defined in Article 4) through the activities covered by this Agreement.

3. Parties to the Agreement. The following are the Parties to this Agreement:

(a) Hapag-Lloyd Container Linie GmbH
Ballindamm 25
20095 Hamburg, Germany; and

(b) Nippon Yusen Kaisha Line
3-2, Marunouchi 2-Chome,
Chiyoda-ku
Tokyo 100, Japan

4. Geographic Scope of the Agreement. The geographic scope of this Agreement (the "Trade") shall extend, via direct, transshipment or intermodal service, between (a) ports on the East Coast of the U.S. (Eastport, Maine to Key West, Florida) and U.S. inland and coastal points served via such ports; and (b) ports in Brazil, Jamaica, Venezuela, Argentina and Uruguay and inland and coastal points served via such ports.

5. Overview of Agreement Authority.

5.1 Vessels. (a) The Parties are authorized to consult and agree upon the number, type and size of vessels to be utilized by them and contributed by one or both of them in the Trade and the deployment of such vessels including the sailing schedules, service frequency, ports to be served, port rotations, and conditions thereof. The Parties are authorized to utilize a maximum of ten (10) vessels in the Trade with capacities of between 1000 and 3000 TEUs, excluding breakbulk space, at any one time. Initially, the Parties shall operate three (3) vessels of approximately 1100 TEU capacity with a minimum service speed of 17 knots. All vessels will have a minimum of 70 reefer plugs for the carriage of integrated reefer containers. Initially, each Party to the Agreement shall provide one vessel and a third vessel shall be chartered jointly by the Parties. The expenses for the vessel to be jointly chartered by the Parties in the initial three-vessel service will be shared equally by each Party. Additional vessels may be provided and expenses allocated as agreed upon by the Parties.

(b) Except as otherwise provided in this Article 5.1(b), each Party shall be individually and solely responsible for all expenses related to the operation of vessels it provides under the Agreement. The costs of operating jointly chartered vessels shall be shared as determined by the Parties. Port expenses and deviation costs associated with port calls at Kingston and Puerto Sucre shall be borne as follows: Kingston - 100% by Hapag-Lloyd; Puerto Sucre - 100% by NYK.

(c) The Party providing a vessel under this Agreement shall ensure that such vessel complies in all respects with applicable laws and regulations, including the International Ship and Port Facility Security Code ("ISPS") and the International Safety Management Code. Upon request, the Party providing a vessel shall provide a copy of the relevant International Ship Security Certificate and/or the Document of Compliance and Safety Management Certificate to the other Party. The Parties are and shall remain parties to the U.S. Customs-Trade Partnership Against Terrorism ("C-TPAT") program.

5.2 Space Chartering. (a) The Parties are authorized to consult and agree to charter and interchange space to and from each other on their respective vessels and/or on vessels on which they have contracted for space, and are authorized to agree on the number of slots and/or space to be chartered and on the terms for such transportation. Initially the space to be operated hereunder shall be allocated equally between the Parties (Hapag-Lloyd - 50% and NYK - 50%). The Parties may also buy and sell space or transfer unused slots from within their respective allocations to one another on such terms and conditions as they may from time to time agree. For purposes of slot allocation, empty containers shall be treated the same as full containers. The geographic division of each Party's slot allocation is at the discretion of each Party; however, operational constraints shall be taken into account to avoid unnecessary shifting of containers, delays or costs. Any excess capacity on a particular sailing may be used by the Parties in such manner as agreed to by the Parties.

(b) Regular chartering or sub-chartering of space in the Trade on vessels operated under this Agreement to non-parties is subject to the mutual consent of the Parties. Ad hoc chartering or sub-chartering by either of the Parties with third parties does not require mutual consent but the Parties shall inform each other giving first right of refusal (48 hour response time) before offering to third parties.

(c) Slot pricing shall be based upon a time charter hire element, a bunker cost element, a port cost element, and such other elements to which the Parties may from time to time agree. Slot occupancy shall be defined as follows for purposes of this Agreement:

- One 20' x 8' x 8' 6" container equals 1 TEU
- One 40' x 8' x 8' 6" container equals 2 TEUs
- One 40' x 8' x 9' 6" container equals 2.3 TEUs

Slot pricing for uncontainerized breakbulk cargo or non-standard containers will be based upon the actual number of slots used or lost when stowed aboard the vessel.

5.3 Use of Equipment, Terminals, Stevedores and Ports. Each Party shall provide its own containers, chassis and other equipment and shall ensure that all equipment conforms to ISO standards. There shall be no pooling of equipment. The Parties are authorized but not required to jointly contract with or coordinate in contracting for rates, terms or conditions with terminals and terminal operators, stevedores, ports, inland depots, and suppliers of services.

5.4 Marketing and Bills of Lading. This Agreement is not intended to create a joint service. This Agreement is not and shall not be construed as a joint venture, partnership or unincorporated association, and no Party is or shall be construed as, deemed to be or found liable for the debts or obligations of the other Party. Each Party shall utilize and maintain its own marketing, pricing and sales organizations; issue its own bills of lading and handle its own claims; be fully responsible for its own expenses and operations; and operate and manage its own vessels. Each Party shall maintain its own identity in all respects with regard to goods and containers carried subject to this Agreement. Each Party to the Agreement shall be solely and singly responsible for the performance of its duties and obligations hereunder.

5.5 Miscellaneous. The Parties are authorized to consult and agree in writing upon such general operational, administrative and accounting matters and other related terms and conditions concerning implementation of this Agreement as may be necessary or convenient from time to time, including, but not limited to, performance procedures and penalties, procedures for allocating space, forecasting, terminal operations, stowage planning, schedule adjustments, recordkeeping, responsibility for loss or damage, the establishment and operation of individual or joint tonnage centers, the rates, costs and payment procedures between the Parties for any service provided by one Party to the other Party, the terms and conditions for adjustments due to the occurrence of force majeure circumstances, insurance, liabilities, claims, indemnification, consequences of delays, and treatment of hazardous and dangerous cargoes.

5.6 Implementing Arrangements. The Parties are authorized to enter into implementing and interstitial arrangements, writings, understandings, procedures or documents within the scope of the authority contained in this Agreement in order to carry out the authority and purpose hereof.

6. Officials of the Agreement and Delegation of Authority. The following are authorized to subscribe to and file this Agreement, any modification hereof, and any accompanying materials with the Federal Maritime Commission:

- (a) Any authorized officer of each of the Parties; and
- (b) Legal counsel for each of the Parties.

7. Membership, Withdrawal and Termination.

7.1 Membership is limited to the Parties hereto. Any Party may withdraw on not less than six (6) months written notice to the other Party; provided, however, that no such notice may be given prior to 18 months from the effective date of the Agreement (i.e., the Agreement shall have a minimum initial term of 24 months). The Agreement shall terminate upon the effective date of withdrawal of either Party. The U.S. Federal Maritime Commission shall be notified promptly of any termination of the Agreement. In the event of any termination or suspension of this Agreement, the Parties shall continue to be responsible for any liability or obligation accrued prior to such termination or suspension.

7.2 In order to avoid any disruption in the service provided hereunder, it is understood that in the event a Party withdraws or the Agreement is terminated, such withdrawal or termination shall become effective with the completion date of the vessel cycle which falls closest in time to the date on which such withdrawal or termination would otherwise become effective, unless the Parties agree otherwise. Any difference in the number of slots exchanged between the Parties outstanding upon termination shall be settled using a formula developed by the Parties within a period of 30 days after the actual termination date.

7.3 Notwithstanding the foregoing, if any Party shall breach its obligations under this Agreement and such breach shall have a material adverse effect on the other Party, and the Parties acting in good faith are unable to resolve their dispute, then the non-breaching Party may withdraw from this Agreement effective upon ten (10) days written notice by the affected Party to the breaching Party without having to observe the minimum initial term.

7.4 If at any time during the term of this Agreement there shall be a change in control or material change in ownership of a Party (for purposes of this provision the "Affected Party") and the other Party is of the opinion that such change is likely to materially prejudice the viability of the Service, then such other Party may within three months of the coming into effect of such change give not less than three (3) months' notice in writing to the Affected Party terminating this Agreement. For purposes of this provision, a change in the control or material change in the

ownership of a Party or of the holding company of that Party shall not include any public offering of shares in that Party or its holding company, or existing shareholders changing their relative shareholdings, or the acquisition by a third party of a minority shareholding in that Party or its holding company.

7.5 Either Party may withdraw from this Agreement at any time and immediately by serving thirty (30) days' written notice thereof on the other Party if at any time during the term of this Agreement a Party (for purposes of this provision the "Affected Party") becomes bankrupt, insolvent or has a receiving order made against it, suspends payments, or continues its business under a receiver for the benefit of any of its creditors or if a petition is presented or a meeting convened for the purpose of considering a resolution, or other steps are taken for the winding up of such Affected Party or any event similar to any of the above shall occur under the laws of the Affected Party's country of incorporation.

8. Voting. All actions taken pursuant to this Agreement shall require unanimous agreement of the Parties.

9. Effective Date. The Agreement shall become effective on the date it becomes effective pursuant to the U.S. Shipping Act of 1984 (the "Effective Date").

10. Duration. The Agreement shall take effect as of the Effective Date and shall remain in effect for a minimum period of 24 months (the "initial period") thereafter. The Agreement shall remain in effect automatically for successive one-year periods beyond the initial period unless and until terminated pursuant to Article 7.

11. Notice. Any notice shall be delivered to the Parties and sent in writing by and to the Party/Parties as follows:

a) For Hapag-Lloyd: Hapag Lloyd Container Linie GmbH
Attn: Mr. Claus Mohrmann
Ballindamm 25, 20095 Hamburg, Germany
Tel: +49-40-3001-2200
Fax: +49-40-3001-2211
Email: claus.mohrmann@hlcl.com

(b) For NYK: Nippon Yusen Kaisha Line
c/o NYK Line do Brasil Ltda.
Attn: Mr. Ichiro Fujie
Avenida Paulista, 854 - 17th floor
CEP 01310-913 - São Paulo - SP Brazil
Tel: +55-11-3371-4301
Fax: +55-11-3371-4316
Email: ichiro.fujie@nykline.com.br

(c) Notice may be sent by mail or by telefax or email and confirmed by mail. Notices sent by telefax shall be deemed to have been received and to be effective if such communications have been recorded as having been successfully transmitted on the printed journal of the sending Party's telefax machine. Notices sent by mail in accordance with this article shall take effect and be deemed to have been served as of the date of the postmark.

12. Force Majeure. No Party shall be held responsible with respect to its failure to perform its obligations hereunder if such failure is due to force majeure. In the event of force majeure the Parties shall meet within a reasonable time in order to consider such adjustments of the terms hereof as may be mutually acceptable. For the purposes of this Agreement, "Force Majeure" shall mean civil commotion, invasion, rebellion, hostilities, sabotage, strikes, labor disputes, work slowdowns or stoppages, governmental (national, state territorial, prefectural, municipal or other) regulation, controls or action, acts of God, boycotts or political bans against any Party, or any other cause whatsoever of a similar nature that is beyond the control of the Party, the consequences of which have not been or have not sufficiently been considered and which substantially impairs the Party's ability to enjoy its rights or carry out its obligations under the Agreement.

13. Applicable Law. The interpretation, construction and enforcement of this Agreement and all substantive rights and obligations of the Parties shall be governed by the laws of England; provided, however, that nothing herein shall relieve the Parties of their obligations to comply with the U.S. Shipping Act of 1984.

14. Arbitration.

14.1 All disputes or differences arising under this Agreement which cannot be amicably resolved shall be referred to arbitration in England in accordance with the Arbitration Act of 1996 and the arbitration rules of the London Maritime Arbitration Association (the "LMAA").

14.2 The Parties agree to appoint a single arbitrator, having appropriate commercial and consortia experience, within 21 days of any Party seeking an appointment. If any Party should so request, a panel of three arbitrators shall be appointed. Should there be no agreement on the appointment of an arbitrator within the said 21 days, then the LMAA President will appoint a single arbitrator (or a panel of three arbitrators, as appropriate) at the request of any Party.

14.3 Where the amount in dispute is US\$ 200,000 or less, the arbitration will proceed on a documents and written submission basis only. However, oral evidence will be allowed at the discretion of the arbitrator(s).

15. Non-Assignment. Neither Party shall assign its rights or delegate its duties under this Agreement, in whole or in part, to any other person or entity without the prior written consent of the other Party hereto.

16. Confidentiality. No Party to this Agreement shall disclose to any person or entity **any** of the trade secrets or confidential operations or **dealings** or **any** confidential information concerning the organization of business of the other Party hereto; provided, however, that **nothing** herein shall preclude a Party from responding to a proper and lawful requirement to provide information regarding this Agreement to the **U.S.** Federal Maritime Commission pursuant to the U.S. Shipping Act of 1984.

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Hapag-Lloyd/NYK Space Charter Agreement
PMC Agreement No.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties to the Hapag-Lloyd/NYK Space Charter Agreement hereby agree this 28th day of October, 2004 to form the Agreement and to file same with the U.S. Federal Maritime Commission.

HAPAG-LLOYD CONTAINER LINE GmbH

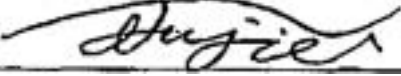
By: _____

Name:

Title:

Nippon Yusen Kaisha Line

By: NYK Line do Brasil Ltda.

By:  _____

Name: Mr. Ichiro Fujie

Title: President

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IN WITNESS WHEREOF, the Parties to the Hapag-Lloyd/NYK Space Charter Agreement hereby agree this 28 day of October, 2004 to form the Agreement and to file same with the U.S. Federal Maritime Commission.

HAPAG-LLOYD CONTAINER LINE GmbH

By: 

Name: Rudy Mack

Title: President

NYK Line do Brasil Ltdn.

BY: _____

Name: Mr. Ichiro Fujie

Title: President